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September 2, 2015

Kirstin R. Beatty
149 Central Park Drive
Holyoke, MA 01040

Re: Initiative Petition No. 15-33: A Law Relative to Studying Radiation Health and
Safety Risks for Protective Measures

Dear Ms. Beatty:

In accordance with the provisions of Article 48 of the Amendments to the Massachusetts Constitution, we have reviewed the above-referenced initiative petition, which was submitted to the Attorney General on or before the first Wednesday of August of this year. I regret that we are unable to certify that the proposed law is in "proper form for submission to the people," as required by Article 48, the Initiative, Part 2, Section 3. Moreover, we are unable to certify that the measure complies with Article 48's requirement that it "contain[] only subjects . . . which are related or which are mutually dependent." Our decision, as with all decisions on certification of initiative petitions, is based solely on art. 48's legal standards; it does not reflect any policy views the Attorney General may have on the merits of the proposed law.

The proposed measure would establish a commission to study and address risks posed by "electromagnetic radiation and technology." It sets forth how the commission would be constituted, instructs the commission to accomplish certain tasks, and requires that certain staff, resources, and compensation for commission members be provided. It would require certain reporting from the commission and specifies availability of that reporting on Commonwealth websites.

The proposed law contains several seriously ambiguous provisions, which make it impossible for us to determine—and inform potential voters of—the meaning and important effects of the proposed law. Moreover, it contains subjects that are not sufficiently closely related to each other such that we can identify a common purpose linking its subjects. For these reasons, explained in more detail below, we are unable to certify the petition in accordance with Article 48.

A. The Proposed Measure is Not in Proper Form for Submission to the People

The proposed law is not in “proper form for submission to the people” as required by Article 48 because its provisions are so ambiguous that it is impossible to determine, or inform potential voters of, the proposed law’s meaning and effect. The “proper form” requirement was designed primarily to avoid “errors of draftsmanship.” Nigro v. Attorney General, 402 Mass. 438, 446 (1988). As stated by one of the framers of Article 48, “the object is this: That we shall have a responsible officer ... to certify that there are no mistakes.” Id. (quoting 2 Debates in the Massachusetts Constitutional Convention, 1917-18, the Initiative and Referendum at 724 (1918) (comments of Mr. Churchill)).

More recently, the understanding of what constitutes “proper form” has expanded. See Paisner v. Attorney General, 390 Mass. 593, 598 (1983) (rejecting “narrow and technical” reading of “proper form” requirement). Now, the “proper form” requirement, read together with the Article 48 requirement that the Attorney General prepare a “fair and concise summary” of the measure, aims to ensure that “the voters understand the law upon which they are voting.” Bowe v. Sec’y of the Commonwealth, 320 Mass. 230, 241 (1946). Thus, the Attorney General has consistently concluded that a law is not in “proper form” when it is not susceptible to preparation of a comprehensible summary.

The proposed law contains significantly ambiguous provisions that make it impossible to determine, and inform potential voters of, its meaning and effect in a comprehensible summary. Section 2, in particular, would give the commission a number of powers that are vague and exceptionally broad. Under section 2(2), the commission would be required to “create relevant new standards, clearly stating general risks if standards are exceeded.” But section 2(2) does not specify what the commission must develop standards for. Even if this language was construed as limited to “electromagnetic radiation and technology risks,” that category, particularly by reason of the word “technology,” is extraordinarily sweeping, leaving voters to guess at how far it extends.

Sections 2(3) and 2(4), which would require the commission to “generate guidelines for use” and “enact partial or full bans in conditions of emergency,” respectively, suffer from the same ambiguity. A voter might ask, “generate guidelines for use of what?” and “enact full or partial bans on what?” Section 2(7) would require the commission to “choose to allow or require any relevant testing and monitoring to ensure compliance.” But it does not say what regulated entities might be subject to testing and monitoring or what they are obligated to comply with. Section 2(11) would require the commission to “designate, where necessary, and prepare succinct, clear warning labels and/or signs with a recognizable design or icon,” but does not identify what these signs and labels are for, or what they will warn people of. Section 2(12) would require the commission to “determine and clearly designate areas to be defined as protected or restricted from items of concern.” But it does not specify standards for what qualifies as an “item of concern,” or what the effect of a designation as a “protected or restricted” area might be.

Other powers of the commission are similarly ambiguous and might have far-reaching effect. Section 1 states that “electromagnetic radiation risks” may be “generated by technologies such as substations, wind turbines, utility meters, solar inverters, transformers, cellular towers, power lines, wireless internet systems, nuclear power, and the like.” The phrase “and the like” is unclear, especially in light of the wide range of technologies included in the preceding list. It may be construed to encompass all technologies related to energy generation. Moreover, in light of the words “wireless internet systems” and “transformer,” it may be construed to encompass such common items as home wi-fi networks, smartphones, and even AC adapters.

To take another example, section 2(8) would require the commission to “update Massachusetts medical definitions, adding relevant environmental illnesses to be covered by insurance, and providing information helpful to training to prevent, recognize, and treat any new injuries, illnesses, or risks, and in order to allow for patient education.” This provision may grant the commission authority that encroaches on authority that the Legislature granted other agencies. For example, under G.L. c. 111M, § 2, Massachusetts residents must maintain health insurance plans that qualify as “creditable coverage.” G.L. c. 176Q, § 3(s), empowers the Commonwealth Health Insurance Connector “to define and set by regulation minimum requirements for health plans meeting the requirement of ‘creditable coverage’.” The proposed law does not repeal G.L. c. 176Q, § 3(s), but it appears to authorize the commission to likewise define by regulation certain requirements for health insurance plans in Massachusetts. The proposed law does not clarify how it would be reconciled with G.L. c. 176Q, § 3(s).

Taken together, the ambiguities make it impossible to determine with reasonable certainty what significant provisions of the proposed law would accomplish. Accordingly, the proposed law is not in “proper form,” as the Attorney General cannot inform the voters, through a “fair, concise summary,” what they are being asked to support.

B. The Petition Contains Subjects That Are Not Related or Mutually Dependent

In addition, the proposed law does not contain “only subjects . . . which are related or which are mutually dependent[.]” Art. 48, Init., pt. 2, § 3. For a petition to meet this relatedness requirement, voters must be able to “identify a common purpose to which each subject . . . can reasonably be said to be germane.” Massachusetts Teachers Association v. Secretary of the Commonwealth, 384 Mass. 209, 219 (1981). In addition, the provisions of the proposed law must bear a “meaningful operational relationship” to one another, so as to “permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy.” Carney v. Attorney General, 447 Mass. 218, 220, 231 (2006). “It is not enough that the provisions in an initiative petition all ‘relate’ to some same broad topic at some conceivable level of abstraction[;] [t]o clear the relatedness hurdle, the initiative petition must express an operational relatedness among its substantive parts.” Id. at 230-31. See also Abdow v. Attorney General, 468 Mass. 478, 499-504 (2014) (petition need not be limited to a single subject but may not meet relatedness requirement if it includes subjects with only a marginal relationship to one another such that voters may be confused or placed in the untenable position of having to cast a single vote on dissimilar subjects).

Here, there is considerable doubt that the proposed law's provisions all bear a "meaningful operational relationship" to each other and would "permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy." Carney, 447 Mass. at 220, 231. The measure would create a commission that studies and addresses risks posed by electromagnetic radiation and technology. Most of the tasks assigned to the commission in section 2 are directed to that purpose. But section 2(5), which requires the commission to "determine whether to mandate, based on public health risk, decommissioning and clean-up of a specific or all nuclear power plants in Massachusetts," would give the commission much more extensive powers.

In general, the Nuclear Regulatory Commission ("NRC") is charged with issuing licenses to and revoking the licenses of nuclear power plants. See 42 U.S.C. §§ 2131–2133, 2237, 2239; Citizens Awareness Network, Inc. v. Nuclear Regulatory Comm'n, 59 F.3d 284, 287 (1st Cir. 1995). The NRC has promulgated extensive regulations that govern decommissioning of nuclear power plants. See, e.g., 10 C.F.R. §§ 50.82, 50.75, 51.53, 51.95. The process takes years and involves a decommissioning plan, as well as the preparation of an environmental impact statement or environmental assessment, in accordance with the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. See Citizens Awareness Network, 59 F.3d at 287-88. Preemption issues aside, the proposed law would purport to confer authority to decommission nuclear power plants on the commission. That authorization would constitute a major change to the existing law governing regulation of nuclear power plants and would give the commission enormous authority to regulate a significant and historically controversial part of the energy market in Massachusetts.

A reasonable voter may not see a "meaningful operational relationship" between this extensive authority and the creation of a commission charged with studying and addressing electromagnetic radiation. A reasonable voter might also view this petition as joining "alluring" provisions to "controversial" provisions in a way that would confuse the average voter—a result the Carney court viewed the relatedness requirement as designed to bar. Carney, 447 Mass. at 228-29. And a reasonable voter may not, therefore, be able "to affirm or reject the entire petition as a unified statement of public policy." Id., at 220, 231. Accordingly, the proposed law fails to meet the constitutional requirement that it contain "only subjects . . . which are related or which are mutually dependent[.]" Art. 48, Init., pt. 2, § 3.

For the foregoing reasons, we are unable to certify Petition 15-33 as meeting the requirements of art. 48.

Very truly yours,



Juliana deHaan Rice
Deputy Chief, Government Bureau
617-963-2583

cc: William Francis Galvin, Secretary of the Commonwealth